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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DENNIS THOMAS,

12 Plaintiff,

13 v.

14 HERNANDEZ, et al.,

15 Defendants.
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No. 2:21-CV-1638-DJC-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint, ECF No. 17.

19 The Court previously determined that Plaintiff's amended complaint states
20 cognizable claims as follows: (1) Plaintiff's Eighth Amendment excessive force and First
21 Amendment retaliation claims against Arredondo; (2) Plaintiff's Eighth Amendment failure-to-
22 protect claim against Hernandez; and (3) Plaintiff's Eighth Amendment deliberate indifference
23 claim against Saltsgayer. See ECF No. 20. The Court also concluded that Plaintiff's amended
24 complaint could not proceed as against any other named defendant on any other claims. See id.
25 To provide Plaintiff the fullest opportunity to explain his claims, Plaintiff was provided leave to
26 amend. See id. Plaintiff was informed that, if he did not file an amended complaint within the
27 time provided, the Court would direct that the action proceed on his cognizable claims against
28 Defendants Arredondo, Hernandez, and Saltsgayer. See id.

To date, Plaintiff has not filed an amended complaint within the time provided by in the prior order and the Court finds that case should now proceed as against Arredondo, Hernandez, and Saltsgayer on the claims identified in the prior order. By separate order, the Court authorizes service of process on these defendants, which will proceed pursuant to the Court's E-service process.

Based on the foregoing, the undersigned recommends as follows:

1. This action proceed on Plaintiff's first amended complaint as follows:
 - a. Plaintiff's Eighth Amendment excessive force and First Amendment retaliation claims against Arredondo.
 - b. Plaintiff's Eighth Amendment failure-to-protect claim against Hernandez.
 - c. Plaintiff's Eighth Amendment deliberate indifference claim against Saltsgayer.

2. All other claims and defendants be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: July 31, 2023


DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE